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SUBJECT: SUPREME COURT RULES DEPUTIES' ARREST UNCONSTITUTIONAL
PRIOR TO LIFTING OF IMMUNITY

REF: CARACAS 9978

1. THE VENEZUELAN SUPREME COURT RULED AUGUST 25 THAT THE ARREST BY THE THIRD MILITARY COURT OF DEPUTIES FORTUNATO HERRERA AND SALOM MESA AS ACCOMPLICES IN THE NIEHOUS KIDNAPPING CASE WITHOUT LIFTING THEIR PARLIAMENTARY IMMUNITY WAS UNCONSTITUTIONAL AND ORDERED THEIR RELEASE FROM SAN CARLOS PRISON. AT THE SAME TIME, THE COURT RULED THAT THE TWO DEPUTIES WERE TO BE HELD UNDER HOUSE ARREST FOR A PERIOD OF 96 HOURS, DURING WHICH TIME CONGRESS' STANDING COMMITTEE MUST DECIDE WHETHER TO AUTHORIZE THEIR CONTINUED DETENTION. THE COURT FOUND THAT THERE WAS SUFFICIENT MERIT FOR CONTINUATION OF LEGAL ACTION AGAINST DEPUTIES HERRERA AND MESA AND DECIDED, SHOULD CONGRESS' STANDING COMMITTEE VOTE TO LIFT THE DEPUTIES' IMMUNITY, THAT THE THIRD MILITARY COURT WOULD CONTINUE TRYING THE CASE BECAUSE THE NATURE OF THE CRIME WITH WHICH THE DEPUTIES ARE CHARGED FALLS UNDER MILITARY JURISDICTION. THE COURT ALSO DENIED A WRIT OF HABEAS CORPUS FILED BY DEPUTY HERRERA'S LAWYER. IN RULING ON THE MERITS OF THE CASE AGAINST DEPUTY

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MESA, THE COURT DIVIDED--THREE JUSTICES VOTED TO PROCEED WITH

THE CASE AND TWO JUSTICES, BOTH OF WHOM ARE IDENTIFIED WITH THE OPPOSITION COPEI PARTY, ABSTAINED. IN ALL OTHER RESPECTS, THE COURT'S DECISION WAS UNANIMOUS.

2. THE COURT THUS RULED IN FAVOR OF THE POSITION ON PARLIAMENTARY IMMUNITY TAKEN BY FISCAL GENERAL JOSE RAMON MEDINA. IN THIS, THE MOST FAR-REACHING PART OF THE COURT'S DECISION, THE COURT SAID THAT "IN CONFORMITY WITH ARTICLES 143, 144 AND 215, PARAGRAPH 2 OF THE CONSTITUTION, NO SENATOR OR DEPUTY MAY BE DETAINED BY CIVIL OR MILITARY AUTHORITIES, NOR SUBJECTED TO CRIMINAL TRIAL BY ORDINARY OR SPECIAL COURTS, EXCEPT IN THE CASE OF AN IN FLAGRANTI DRIME, WITHOUT A PREVIOUS FINDING OF MERIT BEFORE THIS SUPREME TRIBUNAL AND (WITHOUT) BEING PLACED AT THE DISPOSITION (OF THE AUTHORITIES) BY THE RESPECTIVE CHAMBER OR THE STANDING COMMITTEE, IN ACCORDANCE WITH THE PROVISIONS OF THE CITED ARTICLES OF THE CONSTITUTION."

3. REACTION TO THE COURT'S DECISION WAS IMMEDIATE FROM THE MEP PARTY, TO WHICH DEPUTY MESA BELONGS. MEP PRESIDENT LUIS PRIETO FIGUEROA CHARGED THAT THE COURT'S DECISION "WAS NOT MADE IN COMPLETE FREEDOM" AND CLAIMED THAT PRESIDENT PEREZ "HAD USED HIS INFLUENCE THROUGHOUT THE HANDLING OF THE CASE, AND NO PERSON WAS ABOUT TO OPPOSE THE CHIEF EXECUTIVE." THE VISIT EARLIER THIS WEEK OF AD PARTY LEADER JAIME LUSINCHI TO THE COURT WAS SEVERELY CASTIGATED. HE FURTHER CHARGED THAT THE COURT WAS MISTAKEN IN THINKING THERE WAS SUFFICIENT EVIDENCE TO IMPLICATE MESA AND HERRERA AND ASSERTED THAT THE CASE AGAINST MESA IS BASED SOLELY ON THE TESTIMONY OF INDUSTRIALIST EMILIO CONDE JAHN, WHO HAD ATTACKED MESA IN ORDER TO AVOID PROSECUTION AS AN INERMEDIARY IN THE NIEHOUS CASE HIMSELF. AD DEPUTY DAVID MORALES BELLO, PARTY SPOKESMAN ON LEGAL MATTERS, DENIED THAT THE COURT'S DECISION REPRESENTED A REBUFF FOR THE GOV. HE SAID THE DECISION WAS "CORRECT" AND "INSTRUCTIVE" IN THAT IT SHED LIGHT ON PARLIAMENTARY IMMUNITY. OSWALDO ALVAREZ PAZ, COPEI LEADER AND PRESIDENT OF THE CHAMBER OF DEPUTIES, FELT THAT THE DECISION HAD VINDICATED COPEI'S OPPOSITION TO THE GOV'S ACTION IN ARRESTING THE DEPUTIES.

4. PRESIDENT PEREZ, USING THE OCCASION OF THE SIGNING OF THE SECURITY AND DEFENSE ACT, THIS AFTERNOON (AUGUST 26) FIRMLY LIMITED OFFICIAL USE

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DEFENDED THE GOV'S HANDLING OF THE NIEHOUS CASE. HE REFUTED A CHARGE BY MEP THAT HE HAD FORCED THE MILITARY TO TAKE JURISDICTION IN THE CASE AND DENIED THAT THE MILITARY TRIBUNAL'S DETENTION OF DEPUTIES HERRERA AND MESA HAD BROUGHT THE ARMED FORCES INTO DISREPUTE. MOREOVER, PEREZ APPLAUDED THE COURT'S DECISION, INDICATING THAT IT HAD "CONSOLIDATED VENEZUELAN DEMOCRACY" AND GIVEN A "DEFINITIVE INTERPRETATION" TO THOSE PARTS OF THE CONSTITUTION RELATING TO PARLIAMENTARY IMMUNITY.

5. COMMENT: THE SUPREME COURT NOT SURPRISINGLY CAME UP WITH A SOLOMON-LIKE DECISION IN THE DEPUTIES' DETENTION CASE. ON THE ONE HAND, THE POLITICAL OPPOSITION CAN BE SATISFIED WITH THE COURT'S RULING THAT CONSTITUTIONAL PROCEDURES MUST BE FOLLOWED BEFORE A LEGISLATOR CAN BE ARRESTED AND CHARGED WITH A CRIME. ON THE OTHER HAND, THE GOV CAN CONTINUE WITH THE PROSECUTION OF THE TWO DEPUTIES IN THE MILITARY COURTS, ONCE THEIR IMMUNITY HAS BEEN LIFTED. THE COURT DIVIDED ALONG POLITICAL LINES IN DECIDING THE MERITS OF THE CASE AGAINST MESA, TWO JUSTICES WITH AD SYMPATHIES AND ONE IDENTIFIED WITH URD VOTING TO SEND THE CASE ON TO THE CONGRESS AND TWO JUSTICES WITH COPEI LEANINGS ABSTAINING. NOW IT IS UP TO CONGRESS' STANDING COMMITTEE, TO DECIDE WHETHER THE DEPUTIES SHOULD BE BROUGHT TO TRIAL. GIVEN AD'S MAJORITY ON THE COMMITTEE (11 OUT OF 21 MEMBERS), THERE IS LITTLE DOUBT THAT THE DEPUTIES' IMMUNITY WILL BE LIFTED, THUS PERMITTING THE THIRD MILITARY COURT TO CONTINUE LEGAL ACTION AGAINST THEM. IT REMAINS TO BE SEEN HOW FIERCELY THE OPPOSITION, PARTICULARLY COPEI, WILL RESIST THE GOV'S INTENTION TO LIFT IMMUNITY. COPEI FLOOR LEADER EDUARDO FERNANDEZ INTIMATED TO MEMBERS THIS WEEK THAT COPEI MIGHT NOT OPPOSE THE GOV IN THE CASE OF HERRERA BUT WOULD DO SO IN THE CASE OF MESA AGAINST WHOM HE FELT THE EVIDENCE OF COMPLICITY IN THE KIDNAPPING WAS WEAKER. THE AD ON THE OTHER HAND, IS CONVINCED THAT MESA WAS THE "MASTERMIND" OF THE NOTorious KIDNAPPING AND THAT HERRERA'S COMPLICITY WAS OPPORTUNISTIC.

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